

1 EILEEN M. DECKER
United States Attorney
2 LAWRENCE S. MIDDLETON
Assistant United States Attorney
3 Chief, Criminal Division
SCOTT PAETTY (Cal. Bar No. 274719)
4 Assistant United States Attorney
General Crimes Section
5 1200 United States Courthouse
312 North Spring Street
6 Los Angeles, California 90012
Telephone: (213) 894-6527
7 Facsimile: (213) 894-0141
E-mail: scott.paetty@usdoj.gov
8

Attorneys for Plaintiff
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 TODD EDDIE BENSE,

16 Defendant.

No. CR 15-191-SJO

STIPULATION REGARDING RESTITUTION

17
18 Plaintiff United States of America, by and through its counsel
19 of record, the United States Attorney for the Central District of
20 California and Assistant United States Attorney Scott Paetty, and
21 defendant TODD EDDIE BENSE, both individually and by and through his
22 counsel of record, Eric A. Chase, hereby stipulate as follows:

23 1. On April 4, 2016, defendant Todd Eddie Bense ("defendant"),
24 pursuant to a plea agreement (Dkt. No. 27), pleaded guilty to count
25 four of a five-count indictment in this matter, specifically receipt
26 of child pornography in violation of 18 U.S.C. §§ 2252A(a)(2)(A),
27 (b)(1).
28

1 2. On June 8, 2015, the United States Probation Office
2 ("USPO") filed its Presentence Investigation Report ("PSR") (Dkt. No.
3 30) in this matter.

4 3. In the PSR, USPO determined that restitution in this case
5 is applicable pursuant to 18 U.S.C. § 2259, which prescribes
6 mandatory restitution for sexual exploitation and other abuse of
7 children, committed on or after September 13, 1994, and charged under
8 the provisions of 18 U.S.C. §§ 2251-2258, 2260. (PSR ¶ 102.) In the
9 plea agreement, defendant agreed to pay restitution to any victim
10 losses suffered by that victim as a result of relevant conduct.
11 (Plea Agreement ¶ 7.)

12 4. On July 5, 2016, the government filed its sentencing
13 position (Dkt. No. 31) which stated that the government was in the
14 process of gathering information from the victims regarding
15 restitution.

16 5. To date, six victims have submitted restitution requests.

17 6. In Paroline v. United States, 134 S. Ct. 1710, 1722 (2014),
18 the Supreme Court held that "[r]estitution is proper under 18 U.S.C.
19 § 2259 only to the extent the defendant's offense proximately caused
20 a victim's losses." In applying the statute's causation
21 requirements, the Supreme Court determined that "victims should be
22 compensated and defendants should be held to account for the impact
23 of their conduct on those victims, but defendants should only be made
24 liable for the consequences and gravity of their own conduct, not the
25 conduct of others." Id. The Supreme Court recognized that the
26 amount would not be severe in cases where the nature of the causal
27 connection between the conduct of a possessor, like Paroline, and the
28

entirety of the victim's general losses from the trade in her images, which are the product of the acts of thousands of offenders. Id. at 1727. Nevertheless, the Court noted that the amount of restitution should not be a "token or nominal amount." Id. The Court concluded that "the required restitution [should] be a reasonable and circumscribed award imposed in recognition of the indisputable role of the offender in the causal process underlying the victim's losses and suited to the relative size of that causal role." Id. Such a restitution award would serve the "twin goals" of (1) the victim eventually receiving restitution for all losses resulting from the continued circulation of the images and (2) impressing upon offenders the fact that even the offense of simple possession of child pornography affects real victims. Id.

7. In United States v. Galan, 804 F.3d 1287, 1291 (9th Cir. 2015), the Ninth Circuit required that restitution awards in child pornography cases "disaggregate" harms and losses (both past and future) suffered by a victim as a result of the original sexual abuse from ongoing harms suffered as a result of the continued trafficking in and possession of images of the abuse. The court had "no illusion that the task will be easy," and stated that "precision is neither expected nor required," and the court "recognize[d] that the ultimate decision will be a mix of discretion and estimation and that it may result in complication and prolongation of the sentencing process." Id. (internal citation and quotation marks omitted).

8. In arriving at the agreed upon restitution, the parties have attempted to follow Galan by focusing on the harm attributable solely to the defendant's conduct, and not the original contact

1 offense. The parties agree that defendant was a possessor of the
2 images in question and did not have anything to do with their
3 production. Moreover, the parties considered the victim's assertions
4 of ongoing harm due to the pain of knowing that the images of their
5 victimization are still being disseminated and shared, and considered
6 how the victims continue to endure hurt and shame knowing that others
7 may have seen the images. The parties further considered the federal
8 cases where Assistant United States Attorneys voluntarily reported
9 restitution orders. The parties also considered the mean, median,
10 and mode of the restitution awards in those cases. The parties
11 recognize, however, that they do not have reasonably reliable
12 information of post-Galan cases, or cases that have been prosecuted
13 by state and international authorities involving the victims at issue
14 in this case or the potentially large numbers of individuals who have
15 committed child pornography offenses involving the victims in this
16 case, but have escaped prosecution for their crimes to date, and who
17 may never be prosecuted for their crimes. Also, the parties
18 considered the potentially large number of future offenders who may
19 or may not be prosecuted. Finally, the parties considered the number
20 of images the defendant possessed of each victim that has sought
21 restitution in this case. The parties' agreed upon amounts for each
22 victim reflect all of these considerations.

23 9. In addition to the foregoing, government counsel reached
24 out to the attorney for each of the victims that has sought
25
26
27
28

1 restitution in this matter to discuss the amounts set forth below.¹

2 There were no objections.

3 10. Based on the foregoing considerations, the parties hereby
4 agree that the individuals set forth below are victims in this case,
5 meaning they are individuals harmed as a result of a commission of a
6 crime under Chapter 110 of Title 18, which includes defendant's
7 crime, as provided in 18 U.S.C. § 2259(c). The parties also agree to
8 the following awards of restitution:

9 a. Victim Jessica

10 i. Restitution Amount: \$3,500

11 ii. Payable to: "Jennifer Freeman in trust for
12 Jessica," c/o The Marsh Law Firm PLLC, P.O. Box 4669 #65135, New
13 York, NY 10163-4668

14 b. Victim Misty

15 i. Restitution Amount: \$5,681

16 c. Payable to: "Jennifer Freeman in trust for Misty," c/o
17 The Marsh Law Firm PLLC, P.O. Box 4669 #65135, New York, NY 10163-
18 4668

19 d. Marineland Series

20 i. Restitution Amount: \$2,250

21 ii. Payable to: "Carol L. Hepburn in trust for
22 Sarah", c/o Carol L. Hepburn, 2722 Eastlake Avenue E. Suite 200,
23 Seattle, WA 98102

24 e. Lighthouse Series

25 i. Restitution Amount: \$3,500

26
27 ¹ Government counsel left three messages over the course of
28 three weeks for Jennifer Freeman, counsel for victims "Jessica" and
"Misty," but received no response.

1 ii. Payable to: "Sara J. Powell in trust for
2 Cassiopeia", c/o Law Office of Sara J. Powell, PLLC, 550 W. Portland
3 Street, Phoenix, AZ 85003

4 f. Victim Angela

5 i. Restitution Amount: \$2,610

6 ii. Payable to: "Marc C. Lenahan in trust for
7 Angela," c/o Lenahan Law, PLLC, 2655 Villa Creek, Suite 204, Dallas,
8 Texas 75234

9 g. 8 Kids Series

10 i. Restitution Amount: \$5,500

11 ii. Payable to: "Tanya L. Hankins in trust for John
12 Does I-V," c/o The Law Office of Erik L. Bauer, 215 Tacoma Avenue
13 South, Tacoma, Washington 98402.

14 ///

15 ///

11. The parties further agree that the restitution amounts are reasonable, suited to defendant's causal role in each victim's general losses, and represent an attempt by the parties to disaggregate the harm caused by defendant. The total amount of the agreed upon restitution in this matter is \$23,041.

IT IS SO STIPULATED.

Respectfully submitted,

EILEEN M. DECKER
United States Attorney

LAWRENCE S. MIDDLETON
Assistant United States Attorney
Chief, Criminal Division



SCOTT PAETTY
Assistant United States Attorney

October 3, 2016

Date

ERIC A. CHASE
Attorney for Defendant
TODD EDDIE BENSE

Date

TODD EDDIE BENSE
Defendant

Date

11. The parties further agree that the restitution amounts are reasonable, suited to defendant's causal role in each victim's general losses, and represent an attempt by the parties to disaggregate the harm caused by defendant. The total amount of the agreed upon restitution in this matter is \$23,041.

IT IS SO STIPULATED.

Respectfully submitted,

EILEEN M. DECKER
United States Attorney

LAWRENCE S. MIDDLETON
Assistant United States Attorney
Chief, Criminal Division

SCOTT PAETTY
Assistant United States Attorney

Date

10/03/16

ERIC A. CHASE
Attorney for Defendant
TODD EDDIE BENSE

Date

TODD EDDIE BENSE
Defendant

Date

10/02/2016